IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

W.P.NOS.16462 and 16580 of 2004.

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WRIT PETITION NO : 16462 of 2004

Between:

1 G. Seshagiri Rao S/o Venkata Swamy
D. NO. 23-21-20, Mudigondavari Street,
Satyanarayanapuram, Vijayawada,
Krishna District
2 Garre Rama Devi W/o G. Seshagiri Rao
D. NO. 23-21-20, Mudigondavari Street,
Satyanarayanapuram, Vijayawada,
Krishna District

..... PETITIONERS

AND

1 The Vysya Bank Ltd., Vijayawada
2 The Hon'ble Debts Recovery Tribunal Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, more particularly a Writ of Mandamus declaring the order passed in OA No. 265/2002 before the 2nd Respondent dated 06-07-2004 as violative of the settled principles of law besides directing the 2nd respondent to give an opportunity to decide the O.A. No. 265/2002 on merits.

Counsel for the Petitioners : MR.V.S.R.ANJANEYALU

Counsel for the Respondent No.1: Mr. Addepalli Suryanarayana.

Counsel for the respondent No.2: None appeared.

WRIT PETITION NO : 16580 of 2004

Between:

1 G.B.V.D.Kiran S/o.G.Seshagiri Rao
D.No.23-21-20, Mudigondavari Street
Satyanarayanapuram, Vijayawada, Krishna District.
2 G.Seshagiri Rao S/o. Venkata Swamy
D.No.23-21-20, Mudigondavari Street
Satyanarayanapuram, Vijayawada, Krishna District.

..... PETITIONERS

AND

1 Manager, The Vysya Bank Ltd, Vijayawada.
2 Presiding Officer, The Hon'ble Debts Recovery Tribunal,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly a writ of mandamus, declaring the order passed in O.A.No.237/2002 before the 2nd respondent dated 6.7.2004 as violative of the settled principles of law besides directing the 2nd respondent to give an opportunity to decide the O.A.No.237/2002 on merits.

Counsel for the Petitioners : MR.V.S.R.ANJANEYALU

Counsel for the Respondent No.1: Mr. Addepalli Surayanarayana.

Counsel for the respondent No.2: None appeared.

The Court made the following :

ORAL ORDER:

(per Hon'ble The Chief Justice)

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1. Respondent No.1 – Bank has filed O.A.No.265 of 2002 in respect of loan amount of the petitioners in W.P.No.16462 of 2004 for Rs.19,50,113.13 ps and Rs.23,85,939.26 ps. in all for a sum of Rs.43,36,052.39 ps with interest @ 21.42% per annum with quarterly rests and another O.A.No.237 of 2002 in respect of loan amount of the petitioners in W.P.No.16580 of 2004 for Rs.31,95,555.44 ps. with interest @ 21.42% per annum with quarterly rests. Earlier the O.As were pending before the Debts Recovery Tribunal, Hyderabad, but later on they were transferred to the Debts Recovery Tribunal, Visakhapatnam. On earlier occasion also there was a default on the part of the petitioners which was set aside. In nutshell the O.As were coming up for trial before the Debts Recovery Tribunal, Visakhapatnam, and they had come up on 16.09.2003. The same were adjourned to 27.10.2003 and 13.11.2003 for examination of P.W.1, whose examination in chief was completed on 13.11.2003 and on the request of learned counsel for the petitioners for cross-examination of witness, cases were adjourned to 08.12.2003. Though witnesses were present on 08.12.2003, 29.1.2004 and on subsequent dates, learned counsel representing the petitioners did not cross-examine the witnesses though there was conditional order to pay batta since witnesses were coming all the way from Vijayawada. On 23.02.2004 counsel for the petitioners was not present. He neither paid costs nor paid batta to the witnesses. Request made by learned counsel for the petitioners was allowed as a last chance and cases were adjourned to 12.03.2004 on the condition of petitioners paying Rs.2,000=00 in each case towards batta to the witnesses and also paying costs imposed on 27.3.2003. On 12.3.2004 witnesses came from Vijayawada. Time was obtained on the ground that another Advocate from Vijayawada will come and cross-examine the witnesses. Petitioners –

defendants neither paid batta nor costs imposed. Adjournment was sought on the ground of possible settlement. On 23.4.2004 witnesses were absent. Therefore, the cases were adjourned to 25.06.2004 for cross-examination. As on 25.06.2004 nobody appeared for the petitioners – defendants, the Tribunal set the defendants ex parte and posted the cases to 06.07.2004. On 06.07.2004 the O.As were ordered.

2 . Grievance of the petitioners is that the Clerk had wrongly noted the adjourned date as 28.06.2004 instead of 25.06.2004 and therefore there was a good ground not to appear on 25.06.2004. This fact came to the notice of the counsel when he appeared in Court on 28.06.2004 and accordingly after informing the clients, application to set aside ex parte order dated 25.06.2004 was filed on 06.07.2004. As per the affidavit of Mr. Ch. Amarnath, he represented before Debts Recovery Tribunal, Visakhapatnam, the application to set aside ex parte order came up before the Tribunal at 11.00 a.m., and at 11.40 a.m., the call work was over and he represented to the Court that he is ready to cross-examine the witnesses on the next day and undertook to pay batta of the witnesses. However, the applications were taken up after lunch recess and were dismissed on the ground that O.As had been ordered on the same day.

3. With the aforementioned background, counsel for the petitioners submitted that since good ground has been made out for the absence on 25.06.2004, it was a case for setting aside the ex parte order and allowing an opportunity to the petitioners of being heard and O.As ought not to have been ordered or in any case applications to set aside ex parte order could not have been dismissed.

4. We have heard learned counsel for the petitioners and learned counsel for the respondent – Bank has highlighted the conduct of the petitioners in not proceeding with the cases and stated that the Bank was unnecessarily dragged on to protracted litigation by the petitioners in the matter where

heavy amount is due and payable by the petitioners. He has highlighted the conduct of the petitioners that ever since the date when examination in chief of the witnesses was over, no cross-examination was done despite number of opportunities and therefore matters were closed and hence no direction can be issued.

5. Having due consideration to the facts, we are of the view that no doubt there are delaying tactics on the part of the petitioners and every effort is made to stall the proceedings or to drag on the same on some flimsy grounds. But the applications filed seeking setting aside of the orders ought not to have been dismissed on the ground that orders in O.As had been passed. As per the affidavit of the counsel he had not been informed the date correctly by his clerk and therefore application to set aside ex parte order was filed. Therefore, it was but necessary for the Tribunal to have considered the applications on merits. In any case we have gone through the contents of the applications to set aside the ex parte order. We have noticed the conduct of the petitioners which is highly relevant in considering the merits of the applications. Moreover, number of opportunities had been afforded to the petitioners. Petitioners for one reason or the other did not cross-examine the witnesses. However, in order to meet the ends of justice, we are inclined to grant one more opportunity to the petitioners herein to participate in the proceedings, but subject to certain conditions. On complying those conditions alone, petitioners will be permitted to cross-examine the witnesses and thereafter O.As will be proceeded with expeditiously in accordance with law by affording opportunity to the petitioners to lead evidence of the witnesses to be produced at their own costs and responsibility. Accordingly we allow the writ petitions, set aside the orders passed on 06.07.2004 disposing of O.As as also the orders passed in disposing of I.R.Nos.4079 and 4081 of 2004 and set aside the ex parte order dated 25.06.2004 subject to condition of the petitioners depositing with the Bank costs of Rs.10,000=00 (Rs. Ten thousand only) in each case and on further condition of petitioners paying batta due and payable till date for the witnesses and costs imposed from time to time in each case. Petitioners will be permitted to cross-examine the witnesses on any date communicated by the Tribunal, on which date

respondent – Bank will ensure presence of its witnesses before the Tribunal. In case for any reason whatsoever costs are not paid, aforementioned conditions are not complied with and nobody appears on behalf of the petitioners to cross-examine the witnesses, the Debts Recovery Tribunal will proceed with the cases in accordance with law by closing the defence of the petitioners and decide the O.As in accordance with law. It is also made clear that in case petitioners did not cross-examine the witnesses, their right of cross-examination will be forfeited. Parties are directed to appear before the Debts Recovery Tribunal on 22.11.2004. No costs.

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DEVINDER GUPTA. C.J.,

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C.V. RAMULU. J.,

Dated: 02.11.2004.

VRK.

To

1 Manager, The Vysya Bank Ltd, Vijayawada.
2 The Presiding Officer, Debts Recovery Tribunal, Visakhapatnam.

3. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

W.P.NOS.16462 & 16580 OF 2004.

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(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 02.11.2004.